

**THIS DISPOSITION  
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Paper No. 10  
HRW

9/8/00

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Nienhaus & Lotz GmbH

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Serial No. 75/322,091

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Karl F. Milde, Jr. of Milde, Hoffberg & Macklin, LLP  
for Nienhaus & Lotz GmbH.

Hae Park-Suk, Trademark Examining Attorney, Law Office 109  
(Ronald R. Sussman, Managing Attorney).

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Before Simms, Seeherman and Wendel, Administrative  
Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

Neinhaus & Lotz GmbH has filed an application to  
register the mark FASHION FOR YOU and design, as depicted  
below, for "clothing, namely, coats, jackets, suits,  
trousers, pants, skirts, blouses, shirts, sweaters and  
underwear, non-orthopedic corsetry, foundation garments,  
belts, scarves, neckerchiefs, hosiery, knitwear, namely,

sweaters, pullovers, scarves, headbands, shirts; shoes; slippers."<sup>1</sup>

Registration has been finally refused under Section 2(d) of the Trademark Act on the ground of likelihood of confusion with the mark 4 YOU, which has been registered for "trousers, shorts, jogging trousers, skirts, dresses, jackets, coats, boiler suits, shirts, T-shirts, sweat-shirts, blouses, knitted blouses, pull-overs, sweaters, cardigans, vests, belts, ties, leg warmers, scarves, gloves, bikinis and leggings."<sup>2</sup> The refusal has been appealed and applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

Here, as in any determination of likelihood of confusion, two key considerations in our analysis are the

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<sup>1</sup> Serial No. 75/322,091, filed September 12, 1997 under the provisions of Section 44(e), based on ownership of German Registration No. 394 09 503, issued June 29, 1995. At the request of the Examining Attorney, applicant has disclaimed the words FASHION FOR YOU.

<sup>2</sup> Registration No. 2,001,479, issued September 17, 1996.

similarity or dissimilarity of the respective marks and the similarity or dissimilarity of the goods with which the marks are being used, or are intended to be used. See *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999).

Insofar as the goods are concerned, it is obvious that there is a significant overlap between the clothing items of applicant and registrant. Applicant has conceded as much, and has further conceded that the goods of both applicant and registrant might be sold in the same stores to the same class of purchasers. (Applicant's response of October 8, 1998, p. 3). Thus, we proceed on the basis that the respective goods are either identical or closely related clothing items which would travel in the identical channels of trade. As a result, in making our analysis of the respective marks, we are guided by the long-recognized principle that the degree of similarity necessary to support a conclusion of likelihood of confusion declines when the marks are being used on virtually identical goods. See *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992).

The Examining Attorney maintains that applicant's mark FASHION FOR YOU, as presented in its specific design, and registrant's mark 4 YOU create similar commercial

impressions. She argues that the dominant element, both visually and literally, of applicant's mark is the word portion FOR YOU, which is the phonetic equivalent of registrant's mark 4 YOU. Visually, she notes that the wording FOR YOU is prominently centered between the bordered design, is in larger letters than the term FASHION, and is part of that which applicant has described as the most prominent design element in its mark, namely, the vertical stripe containing "two sets of parenthesis '()' arranged on their side" to partially form the letters "O" in FOR and YOU. Literally, she argues that the additional term FASHION is highly descriptive, if not generic, for applicant's goods.

Applicant contends that the difference in appearance of the two marks is "as clear as night and day." Applicant points to the various design elements in its mark and asserts that the appearance as a whole is that of "unique, particular design, rather than simply the words 'FASHION FOR YOU'." By contrast, notes applicant, registrant's mark is simply 4 YOU, in block letters. Applicant argues that the marks are also distinguishable in sound, since applicant's mark contains the additional term FASHION. Furthermore, applicant contends, since the term FASHION is first, the emphasis would be on this term. Finally,

applicant argues that the marks differ in connotation, in that applicant's mark connotes "fashion" or "high end apparel," whereas registrant's mark, although "somewhat cutesy," creates no such impression.

While it is true that marks must be considered in their entireties in determining likelihood of confusion, it is also well established that there is nothing improper in giving more or less weight to a particular portion of a mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Although there are significant design features in applicant's mark, we agree with the Examining Attorney that it is these very features which bring the words FOR YOU to the focal point. The much smaller lettering, the placement far at the top of the mark and the absence of any interior design similar to the "O"s in FOR YOU all diminish the visual impact of the term FASHION. The FOR YOU portion of applicant's mark clearly dominates the mark visually. Moreover, despite any uniqueness of the design features, it is the wording FOR YOU, as brought to the forefront by the design features, which is more likely to be relied upon by purchasers in referring to the goods, and it is this wording, rather than the design, which will make a longer lasting impression on them. Thus, the word portion FOR YOU must be accorded more

weight in determining likelihood of confusion. See *Ceccato v. Manifattura Lane Gaetano Marzotto & Figli S.p.A.*, 32 USPQ2d 1192 (TTAB 1994). The words FOR YOU are obviously the phonetic equivalent of registrant's mark 4 YOU.

We are not discounting the fact that applicant's mark contains the additional term FASHION. Even though this term is, at the very least, highly descriptive when used in connection with wearing apparel, the presence of the term in applicant's mark cannot be ignored. Nonetheless, we do not agree with applicant that the term FASHION is the dominant feature of its mark or that FASHION changes the connotation of the mark as a whole. The overall impression created by applicant's mark is that this is apparel FOR YOU, the same impression created by registrant's mark. Even when measurable weight is given to the term FASHION, we are in total agreement with the Examining Attorney that purchasers might well believe that applicant's FASHION FOR YOU goods are the "high-end" line of registrant's 4 YOU clothing. Applicant's mark might very reasonably be viewed as a modified version of registrant's basic 4 YOU mark which has been adopted for registrant's high fashion items. The overall commercial impressions created by the

respective marks are the same, that these goods are "for you."<sup>3</sup>

Accordingly, we find confusion likely. To the extent that there may be any doubt on this question, we follow the well-established principle that such doubts must be resolved in favor of the registrant. See *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988).

Decision: The refusal to register under Section 2(d) is affirmed.

R. L. Simms

E. J. Seeherman

H. R. Wendel

Administrative Trademark Judges,  
Trademark Trial and Appeal Board

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<sup>3</sup> Applicant has referred for the first time in its brief to several third-party registrations for other marks containing the words FOR YOU or phonetic equivalents thereof. The Examining Attorney has properly objected to this means of introduction of the registrations, both as being untimely and as not being in the form of soft copies or the electronic equivalents. Accordingly, we have given no consideration to applicant's arguments with respect to these third-party registrations. See Trademark Rule 2.142(d).

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